Coram:

The Hon'ble Mr.Justice V.M.Jain, Judge.

Whether approved for reporting?[1]

For the Petitioners: Mr..K.D.Sood, Advocate.

For the Respondents: Mr.Rajesh Verma, Advocate, vice counsel.

V. M. Jain, J.(Oral).

Defendants-petitioners have filed the present revision petition under Section 115 CPC against the order dated 11.8.2005 passed by the trial Court, dismissing the application of the defendants-petitioners for permission to produce copy of the mutation during evidence.

On the oral request made by the learned counsel for the defendants-petitioners, it is directed that the present revision petition under Section 115 CPC shall be treated as a petition under Article 227 of the Constitution of India.

The facts which are relevant for the decision of the present petition are that in a suit for declaration and permanent injunction, filed by the plaintiffs, there was a dispute with regard to the existence of a valid Will

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[1] Whether reporter of local papers are allowed to see the judgment ?

evidence. At this stage, the defendants filed the present application, seeking permission to produce copy of the mutation in evidence, alleging therein that reference about the existence of the said Will has been made in the said mutation. The said application was opposed on behalf of the plaintiffs. After hearing both sides, the learned trial court dismissed the aforesaid application of the defendants, vide order dated 11.8.2005. Aggrieved against the same, the defendants filed the present petition in this Court.

Notice to the plaintiffs-respondents was ordered to be issued.

After hearing the learned counsel for the parties and perusing the record, in my opinion, the present petition must be allowed and the order dated 11.8.2005 passed by the trial Court must be set aside. As referred to above, the case was still at the stage of the defendants' evidence in the application under Section 65 of the Evidence Act, when the defendants filed the present application for permission to produce copy of the mutation in which there was a reference about the disputed Will dated 7.9.1983. Taking into consideration that the case was still at the stage of defendants' evidence, in the application under Section 65 of the Evidence Act, in my opinion, it was a fit case where the learned trial Court ought to

petitioners, seeking permission to produce the copy of the mutation on the record, during evidence on the application under Section 65 of the Evidence Act.

For the reasons recorded above, the present petition is allowed, the order dated 11.8.2005 passed by the learned trial Court is set aside and the defendants-petitioners are allowed to produce the copy of the mutation in evidence, in the application under Section 65 of the Evidence Act, with no order as to costs.

Since further proceedings were stayed by this Court, parties through their counsel are directed to appear before the learned trial court on 20.1.2006 for further proceedings.

CMP No.141 of 2005

In view of the orders passed in the main appeal, the order dated 31.8.2005 shall stand vacated and the application stands disposed of.

December 27,2005(g) **(V. M. Jain), J.**